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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/272,542	03/19/1999	PETER B. MADOFF	10575/002001	5785

26161 7590 12/02/2002

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225 FRANKLIN ST  
BOSTON, MA 02110

EXAMINER

ELISCA, PIERRE E

ART UNIT	PAPER NUMBER
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3621

DATE MAILED: 12/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/272,542

Applicant(s)  
Madoff Peter B. et al.

Examiner  
Pierre E. Elisca

Art Unit  
3621



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Sep 23, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-40, 55-58 And 64 is/are pending in the application.
- 4a) Of the above, claim(s) none 43-54, 59-60 And 62-63 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40, 55-58 And 64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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## DETAILED ACTION

### *Response to Amendment*

1. This Office action is in response to Applicant's amendment filed on 9/23/2002.
2. Claims 1-40, 55-58 and 64 are remained and claims 43-54, 59-60 and 62-63 are canceled.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

4. Claims 1-40, 55-58 and 64 are rejected under 35 U.S.C. 102 (e) as being anticipated by

Lupien et al. (U.S. pat. No. 5,845,266).

**As per claims 1-40, 55-58 and 64 Lupien** discloses a crossing network that matches buy and sell orders (or auction) based upon a satisfaction and quantity profile includes a number of

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trader terminals that can be used for entering orders (which is seen to read as Applicant's claimed invention wherein it is stated that a method of auctioning products, said method executed over a distributed networked computer ), the method comprising the steps of:

entering an order for a product, the order specifying a quantity of the product and an exposure time for which the order can be displayed for responses (see., abstract, col 3, lines 62-67, col 4, lines 1-4, specifically wherein it is stated that network that allows traders to input as orders a satisfaction density profile and maximum size limit.,and the step of exposure time is disclosed in col 7, lines 24-27, specifically wherein it is stated that the trader can also set a time-in-force indicator that determines for how long the order will be valid or exposure time);

entering a response to an order, the response specifying a relative price with a price improvement with the relative price being relative to a generally accepted indicator of a prevailing market price, and quantity (see., abstract, col 2, lines 16-31, specifically wherein it is stated that Instinet allows parties to trade anonymously, entering bids and offers electronically. Instinet subscribers can respond to an order entered into the system either by matching a displayed price); and matching the order with the response in accordance with the exposure time specified by the order (see., abstract, col 2, lines 16-31, specifically wherein it is stated that Instinet allows parties to trade anonymously, entering bids and offers electronically. Instinet subscribers can respond to an order entered into the system either by matching a displayed price, and the step of exposure time

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is disclosed in col 7, lines 24-27, specifically wherein it is stated that the trader can also set a time-in-force indicator that determines for how long the order will be valid or exposure time.

### **CONCLUSION**

5. If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, James Trammell can be reached on (703) 305-9769.

**Any response to this action should be mailed to:**

Commissioner of patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 308-9051, (for formal communications intended for entry )

**OR:**

(703) 305-3718 ( for informal or draft communications, please label

"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA., Sixth floor (receptionist ).

The Official Fax Number For TC-3600 is:

**(703) 305-7687**

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Pierre Eddy Elisca

Patent Examiner

**November 27, 2002**